HIGH COURT OF UTTARANCHAL AT NAINTIAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32(2)(b)

Description of the case.

W.P. No. 512/2003 (S/S)
(Old No. 2040 of 1994)

Rajendra Prasad

Vs.

State of U.P. & others

Approved for reporting

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Not approved for reporting

Date of decision 17.5.2005

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 512 (S/S) OF 2003
(Old No. 2040 of 1994)

Rajendra Prasad Gururani , son of late Sri G.D. Gur-Rani, aged about 33 years, R/o Mohalla, Bakshi Khola, Almora, U.P.

.....Petitioner.

Versus

1. State of U.P., through the Secretary, Uttaranchal/Hill Development Department, Government of U.P., Civil Secretariat, Lucknow.
2. Vishesh Karya Adhikari/Joint Secretary, U.P. Government Uttaranchal/Vikas, Regional Office, Kumaon Region, Almora.
3. State of Uttaranchal, through Secretary, Planning Department, Uttaranchal Shasan, Dehradun.
4. Additional Secretary, Planning Department, Uttaranchal Shasan, Dehradun.
5. Senior Research Officer/Drawing Disbursing Officer, State Planning Commission/Planning Directorate, Uttaranchal, Civil Secretariat, Dehradun.

.....Respondents.

Dated: 17.05.2005

Sri Manoj Tiwari, learned counsel for the petitioner.
Learned Standing Counsel.

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for a writ of mandamus directing the respondents to allow the petitioner to retain his post of Senior Investigator and remain in the service under the respondents. The respondents be restrained from terminating the services of the petitioner in any manner. The petitioner's services may be regularized on the available, clear and substantive vacancies of Senior Investigator in the light of recommendations of respondent no. 2. Further the petitioner has prayed for a writ of mandamus commanding the respondents to pay the petitioner's pay scale of Rs. 1600-

2660 w.e.f. 03.07.1990 meant for the post of Senior Investigator. The Government order sanctioning the posts indicate this pay scales for the four posts of Senior Investigator of Hill Development Department. The respondent further be directed to pay the petitioner's salary for the month of August, Sept. and to pay his monthly salary regularly.

Briefly stated the petitioner was appointed on ad hoc basis. The Joint Secretary Hill Development department, Almora sent a letter on 10.04.1990 for regularization of ad hoc, daily wagers, temporary employees to the Government.

Petitioner submitted a letter on 05.12.1990 seeking his regularisation on the post of "Junior Investigator". Thereafter, the petitioner was asked to work as Junior Investigator. The case of the petitioner was recommended by his head of the department i.e. Joint Secretary Hill Development department, regional office, Almora on 29.01.1990.

On 18.09.1991, the petitioner was given a responsible charge to look after the work of cash account, store etc. He was asked to look after the work of Senior Investigator also.

Learned counsel for the petitioner has submitted that vide Government Order dated 17.12.1988, the Government of U.P. had granted sanction for establishment of two Regional Offices of Hill Development Department, out of which one was to be established at Almora and the another at Srinagar to llok after the development activities in the two Divisions. It has been further submitted that as many as 52 posts in different categories were also sanctioned vide Government Order dated 17.12.1988 for two Regional Offices, out of which 16 were of Junior Investigator. It was provided in the said Government Order that the two Regional Offices shall work directly under the control of Hill Development Department of the State

Government. Necessary budgetary allocation was also made by means of the said Government Order.

It is further submitted that the posts including that of Junior Investigator created by the State Government vide Government Order dated 17.12.1988 were initially sanctioned up to 28.02.1989, as per the usual practice in the State Government. The sanction for the said posts, however, was extended from year to year by the State Government and it was lastly extended by the Government of U.P. vide office memo dated 04.10.2000 and thereafter sanction of the post was extended by the Government of Uttaranchal.

Learned counsel has further pointed out that the petitioner is still getting salary against the post of Junior Investigator created vide Government Order dated 17.12.1988.

Learned counsel for the petitioner has submitted that no service rules were framed by the State of U.P. in respect of the employees serving in the aforesaid two Regional Offices controlled by Hill Development Department and thus service conditions of the employees serving therein, were regulated by executive instructions. Even after creation of State of Uttaranchal, no service rules have been framed for the post of Junior Investigator on which the petitioner is serving. It has been submitted that the petitioner possesses all eligibility conditions for regular appointment on the post of Junior Investigator (now redesignated as Investigator in the new structure of State Planning Commission/Planning Directorate vide Government Order dated 10.10.2002) as specified in the executive instructions issued by the State Government. It is submitted that at the time of his appointment against the post of Junior Investigator, the petitioner possessed Master's Degree in Economics, which was sufficient qualification for regular

appointment on the said post. Respondents on 20.09.1989 where he entered the services of Uttaranchal/Hill Development Department of U.P. Government on 20.09.1989. After working for a short period in the above said capacity, the petitioner was formally appointed as Senior Investigator in the Regional Office of the Hill Development Department, Kumaon Region at Almora on 03.07.1990. It was a substantive appointment against a clear, permanent vacancy of Senior Investigator in the pay-scale of Rs. 1600-2660, under the respondents. The petitioner continued as Senior Investigator. Government order dated 08.04.1992 demonstrates that there were ten posts available in this department to appoint the petitioner on regular basis.

Learned counsel for the petitioner has submitted that vide Government Order dated 17.12.1988, Government of U.P. had granted sanction for establishment of two regional offices of Hill Development Department, out of which one was to be established at Almora and the another at Srinagar to look after the developmental activities in the two Divisions. It may further be stated that as many as 52 posts in different categories were also sanctioned vide government order dated 17.12.1988 for two Regional Offices, out of which 8 were of Senior Investigator. It was provided in the said Government Order that the two regional office shall work directly under the control of Hill Development Department of the State Government. Necessary budgetary allocation was also made by means of the said Government Order.

The posts including that of Senior Investigator created by the State Government vide G.O. dated 17.12.1988 were initially sanctioned upto 28.2.1989, as per the usual practice in the State Government. The sanction for the said post, however, was

extended from year to year by the State Government and it was lasly extended by the Government of U.P. vide office memo dated 04.10.2000 and thereafter sanction for the post was extended by the Government of Uttaranchal. It is significant to point out here that the petitioner is still getting salary against the post of Senior Investigator created vide G.O. dated 17.12.1988.

It is further submitted that no service rules were framed by the State of U.P. in respect of the employees serving in the aforesaid two Regional Offices controlled by Hill Development Deptt. And thus service conditions of the employees serving therein, were regulated by executive instructions. Even after creation of State of Uttaranchal, no service rules have been framed for the post Senior Investigator on which the petitioner is serving, however, it is made clear that the petitioner possesses all eligibility conditions for regular appointment on the post of Senior Investigator (now redesignated as Research Assistant in the new structure of State Planning Commission/Planning Directorate vide G.O. dated 10.10.2002) as specified in the executive instructions issued by the State Government. It may be stated that at the time of his appointment against the post of Senior Investigator, the petitioner possessed Master's Degree in Economic along with experience of more than three years in tabulation and compilation of date which is a requisite qualification for regular appointment on the said post.

The Head of the department/Joint Secretary, Uttaranchal/Hill Development Department Government of U.P., Almora again recommended the name of the petitioner vide letter dated 19.11.1991 for regularization of his services as Junior Investigator or Investigator-cum-Computer. The work of

the petitioner has admired by many officers. The petitioner continued in service in the year 1991-92. The Deputy Secretary, Hill Development also sent recommendation to the Government for regularization of the petitioner's services. Head of the Department of Regional Office, Almora strongly recommended the case of the petitioner for regularization.

The petitioner was assessed as an excellent worker by his Superior Officer in the year, 1992, which is evident from D.O. dated 27.04.1993 issued by Sri Madan SIngh, Vishesh Karya Adhikari, Hill Development Department, Government of U.P. Almora to the Government. After the aforesaid letter, another letter was issued on 1st May, 1993 recommending the case of the petitioner for further recommending the case of the petitioner for further retention in the department.

On 24.04.1993, Uttaranchal Hill Development Department, Kumaon Region, Almora was sanctioned an amount of Rs. 1,12,000/- and on 30.04.1994 Rs. 1,50,000/- budgetary grants to maintain the services of the staff engaged at regional office, which includes petitioner's service also.

Similarly, the regional office, Almora had been gratned four posts of the Senior Investigator in the pay scale of Rs. 1600-2660 vide G.O. dated 17th August, 1993.

Petitioner has submitted that clear vacancies are still continuing in the department. Petitioner has prayed for regularization as he has completed more than three years continuous service in the department on the post of Junior Investigator.

On 28th August, 1993, Sri R.S. Tolia, Secretary to the Government of U.P., Uttaranchal/Hill Development Department pleased to issue a G.O. directing the Vishesh Karya

Adhikari, Regional Office, Hill Development Department, Almora to fill up the available vacancies in the department.

According to the case of the petitioner, he has continuously served in the department for the last more than 14 years with due honesty and dedication against a duly sanctioned post, however, his claim for regularization has not been considered so far despite repeated requests.

Petitioner has submitted that neither any regular selection nor any regular appointment has been made to fill the post held by him and the post of Junior Investigator (now redesignated as Investigator) is now outside the purview of Public Service Commission.

According to the new structure, there are ten posts of Investigator (earlier known as Junior Investigator) in the scale of Rs. 4500-7000. All the employees serving in Regional Offices at Almora and Srinagar are presently serving in State Planning Commission/ Planning Directorate, Uttaranchal and their salary is also drawn against the posts created vide Government Order dated 10.10.2002. A policy decision was taken by the State Government to absorb the employees serving in thue Regional Offices in Planning Directorate and a stipulation to this effect has been made in Government order dated 10.10.2002.

It has also been submitted that the petitioner is discharging the same duties as are being discharged by a regular incumbent on the said post and there is no difference whatsoever in the nature of duties, responsibilities, working hours etc. The petitioner has served with due honesty and dedication ever since his appointment in the year 1989 and presently also he is serving with same dedication against the

post of Investigator in State Planning Commission/ Planning Directorate, Uttaranchal.

It has also been submitted that the duties discharged by the petitioner, include evaluation of projects funded by the State Government, compilation and tabulation of data, for submitting proposal of the Planing Commission, Government of India, documentation in respect of monthly meetings at the Government level etc. All the superior authorities concerned had recommended the work and performance of the petitioner and he has never given any occasion of complaint to anyone.

Petitioner is being paid only Rs. 1500/- per month as consolidated salary without any allowances although he is discharging same duties as a regular Investigator. The present pay scale for the post of Investigator is Rs. 4500-7000 and thus a regular incumbent on the post of Investigator is getting about Rs. 8, 000/- per month.

In view of the above, respondents are directed to consider the petitioner to continue on the post of Investigator and also consider for regularisation in accordance with rules concerning Group-C Post.

Consequently, writ petition is allowed.

(Rajesh Tandon, J.)

Dated: 17.05.2005

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